and which is in accord with equitable doctrines. This infant * * * who falsely misrepresented his age, who was intelligent enough to appreciate the fraudulent scheme and * * * to attempt its execution, should not be aided by a court of equity to consummate such a fraud."[7]

T. S.

SALES—RESERVATION OF TITLE RECORDED UNDER VIRGINIA CODE 1919 SECTION 5189—SHIFTING STOCK OF GOODS—BONA FIDE PURCHASER.—The following are the facts in the case of *Rudolph* v. *Farmers' Supply Co.*:[1]

The plaintiff sold to private citizens, not dealing in automobiles, an automobile reserving title to secure the payment of notes given in consideration for the sale. The memorandum of the contract was recorded in the clerk's office as required by the Virginia Code 1919, § 5189. Later the purchasers sold the car to a dealer in second hand automobiles to become a part of his shifting stock of goods. The plaintiff had no knowledge that the car in question was in the hands of the dealer for sale, and a part of his stock. This dealer later sold it to a bona fide purchaser. A bill was filed by the plaintiff to enforce its vendor's lien. *Held*: Lien enforceable against the bona fide purchaser.

The general rule is well settled in Virginia that where a chattel mortgagee or owner stands by and permits a seller, who is a licensed or recognized dealer in such goods, to hold himself out to the world as owner, treat the goods as his own, place them with other similar goods in a public show room, offer them indiscriminately for sale, or do other acts which are inconsistent with the mortgage and tending to show complete ownership, such mortgagee or owner is estopped to assert his ownership against a purchaser for value without notice and such constructive notice as is furnished by due recordation is insufficient in these cases.[2] This is a well recognized exception to the doctrine that a vendor can transfer no better title than is vested in him.[3] When one considers the character of the sales and transactions of an ordinary retail merchant the necessity for this exception becomes apparent in order to afford protection to the public and to prevent a paralysis of business. In a recent case the Virginia Court decided that the bulk or value of the article mortgaged did not prevent the application of this exception.[4] The following extract from the opinion by Judge

[7] Stallard *v.* Sutherland, *supra.*

[1] (Va.) 108 S. E. 638 (1921).

[2] Addington *v.* Etheridge, 53 Va. 436 (1855); Perry *v.* Shenandoah National Bank, 68 Va. 755 (1876); Consolidated Tramway Co. *v.* Germania Bank, 121 Va. 331, 93 S. E. 572 (1917); Boice *v.* Finance, etc., Co., 127 Va. 563, 102 S. E. 591, 10 A. L. R. 654 (1920); O'Neil *v.* Cheatwood, 127 Va. 96, 102 S. E. 596 (1920). For discussion of these last two cases see Note 10 A. L. R. 662.

[3] Boice *v.* Finance, etc., Co., *Supra.*

[4] Boice *v.* Finance, etc., Co., *Supra.*

Burks shows the fairness of this application as well as its absolute necessity:

> "It would never occur to a customer that he must be on his guard to see whether the article was bulky, of large value, and easily susceptible of identification, and, if so, to examine the registry for liens thereon. Besides, many of the articles carried in such stores would be on the border line, and it would be unreasonable to require a purchaser to determine what could be mortgaged and what could not. To require an examination of the records of liens in such cases would break up the business, and indeed be an embargo on legitimate trade. Capital must seek a more substantial security for its protection. Otherwise it were better that the few should suffer than the general public, who have been lured into purchasing from a dealer who has been entrusted with the indicia of ownership."

Under the facts of the instant case, as stated by the Court, no estoppel could arise. The chattel was not bought by a recognized dealer, it was not placed in a general automobile show room, but it was sold to individuals who were not dealers, for their personal use. Furthermore the court found that the plaintiff had no knowledge that the car had come into the hands of a dealer for sale. There is no principle of equitable estoppel which demands that a mortgagee who takes a chattel mortgage in good faith must follow it through subsequent sales in order to protect his lien if the chattel should eventually come into the hands of a dealer and then be placed among his general goods. The recordation statutes are for the benefit of the mortgagee as well as creditors and purchasers without notice and therefore when a mortgage is once recorded the mortgagee has a valid lien unless he estops himself by some action from asserting it. As no such estoppel can possibly result here it is felt that the Court decided correctly in spite of the hardship on the purchaser, who bought from a dealer, with only constructive notice. A contrary holding would nullify the value of a chattel mortgage.

For further discussion of § 5189 Virginia Code 1919 as to recordation of conditional sales to partnerships see 8 VA. LAW REVIEW 145.

J. H. T.